



DIGITAL ASSETS SERIES: CHAPTER 6

LEGAL UPDATE
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Chapter 6: A General Comparison between IEO, ECF and P2P Financing in Malaysia

Alternative fundraising through equity crowdfunding (“**ECF**”) and peer-to-peer financing (“**P2P Financing**”) in Malaysia sustained its momentum and surpassed RM1 billion in total funds raised since inception. In 2020, ECF / P2P Financing raised approximately RM0.6 billion in aggregate with increased participation from angel and sophisticated investors, which is a 43% increase year-on-year, despite the economic challenges due to the Covid-19 global pandemic. In comparison, venture capital and private equity recorded a 41% decline year-on-year, raising only RM0.3 billion in aggregate in 2020.¹ Such data indicates an increased acceptance and adoption of alternative fundraising methods by growing businesses in Malaysia.

With the introduction of initial exchange offering (“**IEO**”), a new alternative fundraising regime by the Securities Commission Malaysia (the “**SC**”), it will be worthwhile to compare and weigh an IEO against other alternative fundraising methods in Malaysia, namely ECF and P2P Financing.

1. Introduction

- 1.1 A recognised market is essentially an alternative trading venue, marketplace or facility that brings together purchasers and sellers of capital market products under the purview of the SC. These recognised markets are operated by recognised market operators (“**RMO(s)**”) who are registered pursuant to Section 34 of the Capital Markets and Services Act 2007 (“**CMSA**”).
- 1.2 In comparison with approved markets such as the Main Market, ACE Market and LEAP Market of Bursa Malaysia Securities Berhad, which are approved pursuant to Section 8 of the CMSA and subject to stringent requirements under securities laws, the regulations for recognised markets are designed and promulgated to commensurate with the risk profile, nature and scope of the recognised market operations.
- 1.3 Pursuant to the responses received on its Public Consultation Paper No. 2/2014 titled “Proposed Regulatory Framework for Equity Crowdfunding” which sought feedback from the public in respect of the proposed regulatory framework for ECF activities in Malaysia, the SC had on 10 February 2015 issued the [Guidelines on Regulation of Markets under Section 34 of CMSA](#). This was subsequently replaced by the [Guidelines on Recognized Markets](#) (“**RM Guidelines**”) issued on 11 December 2015 which introduced the terms “recognised market” and “RMO(s)”.
- 1.4 Today, save for IEO which is specifically regulated under the [Guidelines on Digital Assets](#) (“**DA Guidelines**”), all recognised markets in Malaysia including a digital asset exchange (“**DAX**”), ECF and P2P Financing are regulated under the RM Guidelines. An IEO operator which is registered under the DA Guidelines shall, however, be deemed to be registered as a RMO for the purposes of section 34 of the CMSA.

¹ Annual Report 2020 of the Securities Commission Malaysia

(a) ECF

- (i) ECF is a form of fundraising in which start-ups, micro enterprises or small and medium enterprises ("**SMEs**") obtain capital through small equity investments from relatively large numbers of investors.
- (ii) Under the ECF framework, an eligible issuer raises funds via an ECF platform from the public. In return, investors will receive equity or shares of the issuer and may enjoy such benefits as may be yielded to a shareholder if the company performs well. The ECF platform is operated by an ECF operator, being a RMO registered under the RM Guidelines.

(b) P2P Financing

- (i) P2P Financing is a debt-based fundraising method that is akin to a loan wherein investors provide financing to a business in return for interest payment and repayment of capital.
- (ii) The P2P Financing framework was introduced in Malaysia via a revision to the RM Guidelines in April 2016 which set out, among others, the requirements for registration and obligations of a P2P operator.
- (ii) Under the P2P Financing framework, eligible businesses and companies i.e. issuers can fund their projects or businesses by issuing investment notes or Islamic investment notes via a P2P platform to the public. Such investment notes or Islamic investment notes subscribed by investors are for a specified tenure with the expectation of a predetermined financial return. The P2P platform is operated by a P2P operator who is registered as a RMO under the RM Guidelines and facilitates the issuance, execution or offering of investment notes or Islamic investment notes on its platform.

1.5 As previously discussed in [Chapter 2](#) of our *Digital Assets Series*, the SC had stated in its Public Consultation Paper (No. 1/2019) titled "*Proposed Regulatory Framework for the Issuance of Digital Assets Through Initial Coin Offerings (ICOs)*" that the regulatory frameworks for both ECF and P2P Financing have shown good progress in meeting the financing needs of micro enterprises and SMEs. This ultimately led to the introduction of a similar regulatory framework for IEO in the DA Guidelines.

1.6 In a nutshell, under the ECF, P2P Financing and IEO regulatory frameworks, the SC directly regulates the RMO(s), who in turn bear the responsibility of assessing the issuers on its platform. In carrying out such assessment, the RMO(s) are required to comply with the requirements imposed by the SC. Such an approach enables the SC to leverage on the expertise and experience of the RMO(s).

1.7 This article aims to provide a comparison of certain key matters between IEO, ECF and P2P Financing that an issuer may wish to consider in respect of its fundraising exercise in Malaysia.

2. Comparison

2.1 We set out below a brief comparison between IEO, ECF and P2P Financing of the following key matters:

	IEO	ECF	P2P Financing
Securities offered by issuer	Digital tokens	Shares	Investment notes / Islamic investment notes
Permitted issuers and non-permitted issuers	<p>Either a:</p> <p>(a) company (excluding an exempt private company and public-listed company*); or</p> <p>(b) limited liability partnership ("LLP")</p> <p>incorporated in Malaysia, the main business operations of which must be carried out in Malaysia.</p> <p>Note: * An unlisted subsidiary or a special purpose vehicle (SPV) of a public-listed company may, however, qualify as an issuer.</p>	<p>(a) Only Malaysian-incorporated private companies (excluding exempt private companies) and LLP will be allowed to be hosted on the platform.</p> <p>(b) The following entities are prohibited from raising funds through the platform:</p> <p>(i) commercially or financially complex structures (i.e. investment fund companies or financial institutions);</p> <p>(ii) public-listed companies and their subsidiaries;</p> <p>(iii) companies with no specific business plan or its business plan is to merge or acquire an unidentified</p>	<p>(a) Only the following Malaysian-incorporated or registered (as the case may be) issuers will be allowed to be hosted on the platform:</p> <p>(i) sole proprietorship;</p> <p>(ii) partnership;</p> <p>(iii) LLP;</p> <p>(iv) private company;</p> <p>(v) unlisted public company; and</p> <p>(vi) any other type of entity as may be permitted by the SC.</p> <p>(b) The following entities are prohibited from raising funds through the platform:</p> <p>(i) commercially or financially complex</p>

		<p>entity (i.e. blind pool);</p> <p>(iv) companies other than a microfund that propose to use the funds raised to provide loans or make investment in other entities;</p> <p>(v) companies other than a microfund with paid-up share capital exceeding RM10 million; and</p> <p>(vi) any other type of entity that is specified by the SC.</p>	<p>structures (i.e. investment fund companies or financial institutions);</p> <p>(ii) public-listed companies and their subsidiaries;</p> <p>(iii) companies with no specific business plan or its business plan is to merge or acquire an unidentified entity (i.e. blind pool);</p> <p>(iv) companies that propose to use the funds raised to provide loans or make investment in other entities; and</p> <p>(v) any other type of entity that is specified by the SC.</p>
Financial requirement of the issuer	<p>(a) Other than LLP: minimum paid-up capital of RM500,000 and shareholders' funds of RM500,000 maintained at all times.</p> <p>(b) LLP: minimum capital of RM500,000 maintained at all times.</p>	Not applicable.	Not applicable.

<p>Composition of the Board of Directors</p>	<p>The board of directors of the issuer must have at least two (2) directors whose principal or only place of residence is in Malaysia.</p>	<p>Not applicable.</p>	<p>Not applicable.</p>
<p>Application to raise funds through platform</p>	<p>(a) The issuer must submit its application to the IEO operator in the form and manner as may be prescribed by the IEO operator for approval.</p> <p>(b) The application shall:</p> <ul style="list-style-type: none"> (i) include a fit and proper declaration of all the issuer's directors and senior management; (ii) include the white paper, which shall incorporate among others, the following information: <ul style="list-style-type: none"> (A) the objective or purpose of the IEO, including detailed information on the IEO project; (B) the key characteristics of the 	<p>(a) The issuer must submit its application to the ECF operator in the form and manner as may be prescribed by the ECF operator for approval.</p> <p>(b) The application shall include relevant information such as:</p> <ul style="list-style-type: none"> (i) information that explains key characteristics of the company; (ii) information that explains the purpose of the fund raising and the targeted offering amount ("Target Amount"); (iii) information relating to the business plan of the company; and (iv) financial information relating to the company. 	<p>(a) The issuer must submit its application to the P2P operator in the form and manner as may be prescribed by the P2P operator for approval.</p> <p>(b) The application shall include relevant information such as:</p> <ul style="list-style-type: none"> (i) information that explains key characteristics of the business; (ii) information that explains the purpose of the investment note or Islamic investment note and the targeted offering amount ("Target Amount"); (iii) information relating to the business plan; (iv) information relating to his intention to seek funding

	<p>digital token;</p> <p>(C) detailed description of the sustainability and scalability of the IEO project;</p> <p>(D) the business plan;</p> <p>(E) the targeted amount to be raised ("Target Amount") and the subsequent use and application of the proceeds illustrated in a scheduled timeline for drawdown and utilisation of proceeds (schedule of proceeds);</p> <p>(F) any rights, conditions or functions attached to the digital tokens including</p>		<p>from any other P2P platforms concurrently; and</p> <p>(v) financial information relating to the business.</p>
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	<p>any specific rights attributed to a token holder;</p> <p>(G) a technical description of the protocol, platform or application of the digital token, as the case may be, and the associated benefits of the technology; and</p> <p>(H) the audited financial statements of the issuer;</p> <p>(iii) demonstrate that the IEO project provides an innovative solution or a meaningful digital value proposition for Malaysia.</p>		
<p>Submission to SC</p>	<p>An issuer must furnish a copy of the white paper, that has been furnished to the IEO operator, to the SC in the manner and form</p>	<p>Not applicable.</p>	<p>Not applicable.</p>

	as may be specified by the SC.		
Fundraising limit	A maximum of RM100 million within any continuous 12-month period based on the following formula: Issuer's shareholders' funds (or in the case of an LLP, issuer's capital) multiplied by 20	(a) A maximum of RM10 million through ECF platforms in the issuer's lifetime, excluding the issuer's own capital contribution or any funding obtained through a private placement exercise. (b) Limit does not apply to microfunds.	No limit but the amount that may be raised or the rate of financing will depend on the issuer's risk scoring conducted by the P2P operator.
Funds raised in a campaign	(a) The Target Amount must be met otherwise all funds shall be refunded to the investors. (b) The issuer is not allowed to keep any amount exceeding the Target Amount.	(a) The minimum Target Amount must be met otherwise all funds shall be refunded to the investors. (b) The issuer is not allowed to keep any amount exceeding the maximum Target Amount. <i>Note:</i> Every issuer must set a range for the Target Amount (minimum and maximum amount) for each ECF campaign, and may only keep the funds raised within the said range.	(a) At least 80% of the Target Amount must be met otherwise all funds shall be refunded to the investors. (b) The issuer is not allowed to keep any amount exceeding the Target Amount.
Investment limit	<u>Retail investors</u> Maximum of RM2,000 per issuer with a total investment limit not exceeding RM20,000	<u>Retail investors</u> Maximum of RM5,000 per issuer with a total amount of not more than RM50,000 within a	<u>Retail investors</u> To manage the risk exposure of retail investors, P2P operators must encourage retail

	<p>within a 12-month period</p> <p><u>Angel investors</u> Maximum of RM500,000 within a 12-month period</p> <p><u>Sophisticated investors</u> No limit</p>	<p>12-month period</p> <p><u>Angel investors</u> Maximum of RM500,000 within a 12-month period</p> <p><u>Sophisticated investors</u> No limit</p>	<p>investors to limit their investments on any P2P platform to a maximum of RM50,000 at any period of time.</p> <p><u>Angel investors</u> No limit</p> <p><u>Sophisticated investors</u> No limit</p>
Concurrent hosting	Issuer must not be hosted concurrently on multiple IEO platforms or on an ECF or P2P platform.	Issuer shall not be hosted concurrently on multiple ECF platforms, but may be permitted to be hosted on an ECF platform and P2P platform, at the same time, subject to disclosure requirements as may be specified by the platform operators.	Issuer shall not be hosted concurrently for the same purpose on multiple P2P platforms, but may be permitted to be hosted on a P2P platform and ECF platform, at the same time, subject to disclosure requirements as may be specified by the platform operators.
Handling of investors' monies	<p>The IEO operator shall ensure that the monies:</p> <p>(a) be kept in one or more trust accounts maintained with a licensed Malaysian financial institution; and</p> <p>(b) administered by an independent</p>	<p>The ECF operator shall ensure that the monies:</p> <p>(a) be kept in one or more trust accounts maintained with a licensed Malaysian financial institution; and</p> <p>(b) administered by an independent trustee registered with the SC.</p>	<p>The P2P operator shall ensure that the monies:</p> <p>(a) be kept in one or more trust accounts maintained with a licensed Malaysian financial institution or in the case of an Islamic investment note, in a Shariah-compliant trust account with a licensed Islamic bank, licensed bank or licensed</p>

	trustee registered with the SC.		investment bank approved to carry on Islamic banking business; and (b) administered by an independent trustee registered with the SC.
Handling of securities offered	<p>(a) In respect of the digital tokens offered by an issuer, the IEO operator shall:</p> <p>(i) ensure that the digital tokens are properly segregated and safeguarded from conversion or inappropriate use;</p> <p>(ii) establish and maintain sufficiently and verifiably secured storage medium designated to store digital assets from investors; and</p> <p>(iii) establish system and controls to maintain accurate and up-to-date records of the investors' digital tokens.</p> <p>(b) For the custody of the digital tokens,</p>	The handling of shares offered by an issuer is not specified under the RM Guidelines. Nonetheless, the relevant provisions under the Companies Act 2016 in respect of the administration of shares issued shall apply to issuers.	<p>(a) The handling of investment notes offered by an issuer is not specified under the RM Guidelines.</p> <p>(b) However, in respect of the monies received by an issuer as repayments to investors, the P2P operator shall:</p> <p>(i) establish and maintain in a licensed institution, one or more trust accounts designated for the monies received as repayments to investors;</p> <p>(ii) ensure that the trust accounts are administered by an independent trustee registered with the SC;</p> <p>(iii) not withdraw from or deal with such monies in the trust account except for the purpose of making payment</p>

	<p>the IEO operator may either appoint a digital asset custodian registered with the SC or provide its own custody services (provided it complies with the requirements set out under Part D of the DA Guidelines).</p>		<p>to the person entitled thereto (issuer, investor or P2P operator) or that is as otherwise directed by SC or by any other enforcement agencies as provided under written law; and</p> <p>(iv) have in place processes or policies to manage any default by issuers including using its best endeavours to recover amounts outstanding to investors.</p>
Cooling-off right	<p>Investors (save for staff of the issuer) shall be entitled to a cooling-off right which must be exercised during the cooling-off period which is not fewer than six (6) business days commencing from the closing date of the offer period.</p>	<p>Investors shall be entitled to a cooling-off right which must be exercised during the cooling-off period which is not fewer than six (6) business days.</p>	<p>Investors shall be entitled to a cooling-off right if such right is provided by the P2P operator at its discretion.</p>
Conditions precedent for release of funds to issuers	<p>The IEO operator shall only release the funds to the issuer after the following conditions are fulfilled:</p> <p>(a) the Target Amount has been met;</p> <p>(b) there is no material change relating to the IEO</p>	<p>The ECF operator shall only release the funds to the issuer after the following conditions are fulfilled:</p> <p>(a) the minimum Target Amount has been met;</p> <p>(b) there is no material adverse change relating to the offer</p>	<p>The P2P operator shall only release the funds to the issuer after the following conditions are fulfilled:</p> <p>(a) at least 80% of the Target Amount has been met;</p> <p>(b) there is no material adverse change relating to the</p>

	<p>or the issuer during the offer period;</p> <p>(c) the cooling-off period has expired; and</p> <p>(d) such other additional condition precedent as the IEO operator may impose provided it serves the token holders' interest.</p>	<p>during the offer period;</p> <p>(c) the cooling-off period of at least six (6) business days has expired; and</p> <p>(d) such other additional condition precedent as the ECF operator may impose provided it serves the investors' interest.</p>	<p>investment notes or Islamic investment notes during the offer period; and</p> <p>(c) such other additional condition precedent as the P2P operator may impose provided it serves the investors' interest.</p>
Events of refund to investors	<p>The funds will be refunded to the investor(s) in any of the following events:</p> <p>(a) where the Target Amount has not been met;</p> <p>(b) where there is surplus from the Target Amount (then such surplus shall be refunded);</p> <p>(c) where cooling-off right is exercised by any investor; or</p> <p>(d) where a supplementary white paper has been published on the IEO platform and the investor decides to cancel his/her/its subscription of the digital token within six (6) business days from receiving</p>	<p>The funds will be refunded to the investor(s) in any of the following events:</p> <p>(a) where the minimum Target Amount has not been met;</p> <p>(b) where there is surplus from the maximum Target Amount (then such surplus shall be refunded); and</p> <p>(c) where cooling-off right is exercised by any investor.</p>	<p>The funds will be refunded to the investor(s) in any of the following events:</p> <p>(a) if there is a failure to raise at least 80% of the target amount sought to be raised;</p> <p>(b) where there is surplus from the Target Amount (then such surplus shall be refunded); and</p> <p>(c) where cooling-off right is exercised by any investor in a case where such right is provided by the P2P operator.</p>

	notice of such supplementary white paper.		
Secondary market	<p>Trading of digital assets is allowed provided:</p> <p>(a) the SC has approved the trading of the said digital asset; and</p> <p>(b) the said digital asset is accepted by a DAX operator to be traded on its platform.</p>	<p>(a) Trading of shares is allowed on the ECF platform provided the ECF operator has approval from the SC to operate a secondary market.</p> <p>(b) The trading of the shares is subject to the following:</p> <p>(i) only shares of an issuer that have been hosted and successfully funded through the platform will be permitted to be traded;</p> <p>(ii) the shares may only be traded after six (6) months from the date of completion (i.e. successful allotment and issuance of shares to the investors) of the issuer's fundraising campaign; and</p> <p>(iii) in the case of shares held by promoters, the promoter can only sell, transfer or assign his shares after six (6) months from the date the shares are</p>	<p>(a) Trading of investment notes or Islamic investment notes is allowed on the P2P platform provided the P2P operator has approval from the SC to operate a secondary market.</p> <p>(b) The trading of the investment notes or Islamic investment notes is subject to the following:</p> <p>(i) at point of admission for secondary market trading, the investment note or Islamic investment note has a remaining repayment period of at least three (3) months;</p> <p>(ii) the investment note or Islamic investment note is executed or offered through the platform; and</p> <p>(iii) the investment note or Islamic investment note has been issued to the investor.</p>

		traded on the secondary market.	
Microfunds	Not applicable.	The operator may allow for the hosting of a microfund on its platform provided the microfund: <ul style="list-style-type: none"> (a) is registered with the SC as a venture capital company; (b) has a specified investment objective; and (c) only raises funds from sophisticated investors and angel investors. 	Not applicable.
Moratorium	(a)The issuer's directors and senior management must, in aggregate, own at least 50% equity holding in the issuer on the date of issuance of the digital tokens; and (b)Post-issuance of the digital tokens, the issuer's directors and senior management may only sell, transfer or assign not more than 50% of their respective equity holding until completion of the IEO project. For avoidance of doubt, this includes directors and senior management who are subsequently appointed pursuant	Not applicable.	Not applicable.

	to their purchase of any equity in the issuer post-issuance of the digital tokens.		
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3. Perspective

- 3.1 With the inception of ECF and P2P Financing (and soon, IEO) frameworks, start-ups, micro enterprises and SMEs are now able to tap into a larger investor base pursuant to the regulatory frameworks introduced under the DA Guidelines and RM Guidelines. Businesses will also be able to gauge market reception of their proposed products, services and/or business model from responses received on the respective platforms.
- 3.2 The obligations of an issuer in IEO imposed under the DA Guidelines appear to be more stringent than those set out in the RM Guidelines applicable to issuers in ECF and P2P Financing. The permitted maximum investment amount by a retail investor in an IEO is also significantly lower than that imposed on a ECF or P2P Financing. These suggest that the SC is taking a more careful and stricter approach with regards to the regulatory framework of IEO, which could be driven by certain factors such as novelty of the digital assets market, risks and complexity of the digital token structures (as compared to traditional investment products such as equity and debt offered in ECF and P2P Financing respectively).
- 3.3 As mentioned earlier in this Article, ECF and P2P Financing have demonstrated encouraging growth in Malaysia since their respective inception. With the introduction of the IEO regime, businesses now have an additional option to raise fund through issuance of digital tokens. This is an applaudable effort by the SC to ensure the competitiveness of the financial markets of Malaysia.
- 3.4 As explored in the previous chapters of our Digital Assets Series, IEO is expected to present a host of advantages to the issuers, in view of the involvement of blockchain technology in the fundraising process. However, certain businesses may find it challenging to fulfil certain prerequisites imposed under the IEO regime, especially where such businesses are not technology-savvy or have difficulty in demonstrating that their intended IEO projects provide innovative solutions or meaningful digital value propositions for Malaysia. (Please read [Chapter 4](#) and [Chapter 5](#) of our *Digital Assets Series* for more information in this regard). It will therefore be advisable for a business leader to consider all pertinent factors and consult with the relevant advisersto make a well-informed decision before embarking on a fundraising journey.

In the previous chapters of our Digital Assets Series, we addressed:

[Chapter 1: A brief introduction to digital assets and its regulatory framework in Malaysia](#)

[Chapter 2: IEO and the regulatory framework for IEO operators in Malaysia](#)

[Chapter 3: Digital asset custodian \("DAC"\) and the regulatory framework for DACs in Malaysia](#)

[Chapter 4: The regulatory framework for persons seeking to raise funds via IEO in Malaysia](#)

[Chapter 5: A general comparison between IEO and IPO in Malaysia](#)

In the next and final chapter of our Digital Assets Series (Chapter 7), we examine the different use cases of digital tokens and the factors to consider when tokenisation for the purposes of fundraising.

This legal update is for general information only and is not a substitute for legal advice.

Further Information

Should you have any queries as to how these developments may affect your business, please do not hesitate to contact us.



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